

Attorney Docket No. P13163-US2
Customer Number 27045

AMENDMENTS TO THE DRAWINGS

Fig. 7 has been amended to add a missing reference number. Applicant has enclosed a Replacement Sheet.

Attachment: Replacement Sheet (1 page)

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REMARKS/ARGUMENTS

1.) Claim Amendments

The Applicant has amended claims 11 and 34. Accordingly, claims 11-20 and 34-41 are pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks. *No claim elements have been added which were not in the original submitted claims. Consequently, this amendment does not raise new issues that would require a further search or substantial consideration by the Examiner.*

2.) Examiner Objections - Specification

The Examiner objected to the disclosure because of several informalities. The Applicant thanks the Examiner for his careful review of the specification. In response, the Applicant has modified the specification as suggested by the Examiner. The Examiner's consideration of the amendments to the Specification is respectfully requested.

3.) Claim Rejections – 35 U.S.C. § 102(e)

The Examiner rejected claims 11-13, 15, 34, 35 and 39-41 under 35 U.S.C. § 102(3) as being anticipated by Koodli (US 6,608,841). The Applicant respectfully traverses this rejection.

The PTO provides in MPEP § 2131 that "[t]o anticipate a claim, the reference must teach every element of the claim...." Therefore, with respect to claim 11, to sustain this rejection Koodli must contain all of the above claimed elements of the claim. The Applicant respectfully asserts that claims 11-13, 15, 34, 35 and 39-41 contains elements which are not found in Koodli.

For instance, claim 11 contains the following:

in response to the determination that context control information is to be transmitted from the first packet communication station to the second packet communication station, providing a second transmission parameter according to which the context control information can be transmitted from the first packet communication station to the second packet communication station with a probability of delivery that exceeds a

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probability of delivery associated with said step of transmitting information other than context control information according to the first transmission parameter;

The Office Action implies that "a second transmission parameter" reads upon a "repetition of context information in the following packets." The Applicant respectfully disagrees. The claim specifies "context *control* information," and not "context information" as mentioned in the Office Action. "Context control information" is defined on page 24, lines 21-22. As is apparent from the specification and what is known in the art, the term "context control information" is simply not the same as a "transmission parameter." From reading the present specification, it is clear that transmission parameters include such transmission related items as: Kp - a factor indicating the output power, R - the channel coding rate, N - the number of consecutive packets, and F - the frequency of broadcasting the number of consecutive packets. Although not required, in an effort to expedite allowance of this application and to reduce any confusion relating to the terminology, the Applicant has revised claim 11 to explicitly contain a definition of transmission parameter.

Furthermore, claim 11 only provides a second transmission parameter in "response to the determination that context control information is to be transmitted from the first packet communication station to the second packet communication station." Nothing in Koodli implies that providing a second *transmission* parameter is conditional upon the determination that context control information is to be transmitted from the first packet communication station to the second packet communication station. The reference in Koodli appears to state that an RTP packet is sent with a new first order difference. However, this is not a transmission parameter.

Because claim 11 contains elements which are not found in Koodli, the Applicant respectfully requests a withdrawal of the §102 rejection. Claims 12-13 depend from amended claim 11 and recite further limitations in combination with the novel elements of claim 11. Therefore, the allowance of claims 12-13 is respectfully requested.

Claim 15 is also dependent on claim 11. With respect to this claim, the Examiner appears to have equated the first order difference of Koodli with a context update and the second order difference of Koodli with a context update request. The Applicant

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respectfully objects to this characterization. As anyone skilled in the art would know, a second order difference is simply not the same as a context update *request*. Similarly, a first order difference is not the same as a context update.

Similarly, with respect to claim 34, to sustain the rejection Koodli must contain all of the above claimed elements of the claim. The Applicant respectfully asserts that claims 11-13, 15, 34, 35 and 39-41 contains elements which are not found in Koodli.

For instance, claim 34 contains the following:

a transmission parameter generator having an input for receiving an indication that context control information generated by said context control information generator is to be transmitted from the first packet communication station to the second packet communication station, said transmission parameter generator operable in response to said indication for providing a second transmission parameter according to which the context control information can be transmitted from the first packet communication station to the second packet communication station with a probability of delivery that exceeds a probability of delivery associated with transmission of information other than context control information according to the first transmission parameter; and

said output responsive to said second transmission parameter for transmitting the context control information from the first packet communication station to the second packet communication station according to the second transmission parameter.

The Office Action implies that "a second transmission parameter" reads upon a "repetition of context information in the following packets." The Applicant respectfully disagrees. The claim specifies "context *control* information," and not "context information" as mentioned in the Office Action. "Context control information" is defined on page 24, lines 21-22. As is apparent from the specification and what is known in the art, the term "context control information" is simply not the same as a "transmission parameter." From reading the present specification, it is clear that transmission parameters include such transmission related items as: Kp - a factor indicating the output power, R - the channel coding rate, N - the number of consecutive packets, and F - the frequency of broadcasting the number of consecutive packets. Although this is not required, in an effort to expedite allowance of this application and to reduce any confusion relating to the terminology, the Applicant has revised claim 34 to explicitly contain a definition of transmission parameters.

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Furthermore, claim 34 only provides a second transmission parameter in "response to the determination that context control information is to be transmitted from the first packet communication station to the second packet communication station." Nothing in Koodli implies that providing a second *transmission* parameter is conditional upon the determination that context control information is to be transmitted from the first packet communication station to the second packet communication station. The reference in Koodli appears to state that an RTP packet is sent with a new first order difference. However, this is not a *transmission* parameter.

Because claim 34 contains elements which are not found in Koodli, the Applicant respectfully requests a withdrawal of the §102 rejection. Claims 39-41 depend from amended claim 34 and recite further limitations in combination with the novel elements of claim 39-41. Therefore, the allowance of claims 39-41 is respectfully requested.

4.) Claim Rejections – 35 U.S.C. § 103 (a)

The Examiner rejected claims 16, 18 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Koodli. The Applicant respectfully traverses this rejection.

As provided in MPEP § 2143, "[t]o establish a prima facie case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." Furthermore, under MPEP § 2142, "[i]f the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness." It is submitted that the Office Action does not factually support a prima facie case of obviousness for claims 16, 18 and 36 based on Koodli.

First, claims 16, 18 and 36 incorporate the elements of claims 11 or 34, respectively. Thus, as explained above, these claims are patentable for the same reasons that claims 11 and 34 are patentable.

Second, the Examiner admits that all the elements of claims 16, 18 and 36 are not taught by Koodli. Thus, the Examiner is either relying on his personal knowledge or by what is "well known in the art" to justify the combination. As the Examiner is aware, in order preserve the Applicant's right to traverse this assertion in later actions, the Applicant must traverse this assertion in this Office Action. Thus, the Applicant respectfully traverses the assertion that these limitations are obvious in light of what is

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"well known in the art" and, as permitted under MPEP § 2144.03, requests that the Examiner cite a reference in support of his position for each rejected claim.

Alternatively, if the Examiner is relying on his personal knowledge as the basis for these assertions, Applicant respectfully objects to the Examiner's use of official notice. Under MPEP § 2144.03, official notice may only be taken of "facts outside of the record which are capable of instant and unquestionable demonstration as being 'well-known' in the art." (Emphasis added). When a rejection is based on facts within the personal knowledge of the Examiner, the facts must be as specific as possible, and the reference must be supported, when called for by the applicant, by an affidavit of the Examiner, which may be subject to explanation by the Applicant. 37 CFR 1.104(d)(2). Pursuant to 37 CFR 1.104(d)(2), the Applicant respectfully requests the Examiner provide such supporting facts and evidence in the form of an affidavit, so that, if necessary, the Applicant may have a chance to explain the reference in later actions.

The Examiner rejected claims 19, 20, 37 and 38 under 35 U.S.C. § 103(a) as being unpatentable over Koodli, and further in view of Seshadri, et al. (US 5,799,013). The Applicant respectfully traverses this rejection.

First, claims 19, 20, 37 and 38 incorporate the elements of claims 11 or 34, respectively. It is respectfully submitted that the missing elements of claims 11 and 34 are not found in Seshadri. Thus, as explained above, these claims are patentable for the same reasons that claims 11 and 34 are patentable.

Second, the Office Action states: "it would have been obvious to one of ordinary skill in the art at the time of the invention to have the second transmission parameter specify that the context control information is to be transmitted from the first packet communication station to the second packet communication station at a higher power level than a power level specified by the first transmission parameter *in order to provide higher error protection for the context control information.*"

According to MPEP § 2143.01, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one

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of ordinary skill in the art. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Obviousness cannot be established by combining references "without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done." MPEP 2144, quoting from *Ex parte Levengood*, 28 USPQ2d 1300, 1302 (Bd. Pat. App. & Inter. 1993). "Broad conclusory statements regarding the teaching of multiple references, standing alone are not 'evidence.'" See *Dembiczak*, 50 USPQ2d, 1614, (Fed. Cir. 1999).

Thus, the case law is clear that there must be evidence that a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed. It is also clear that a rejection cannot be predicated on the mere identification of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *Ecolochem Inc. v. Southern California Edison*, 56 USPQ2d 1065, 1076 (Fed. Cir. 2000).

It is respectfully asserted that there has only been presented a broad conclusory statement for motivation: "*in order to provide higher error protection for the context control information.*" It is respectfully submitted that this is not "evidence" presented of a motivation to combine the references. Consequently, the Applicant respectfully requests that §103 rejection be withdrawn.

CONCLUSION

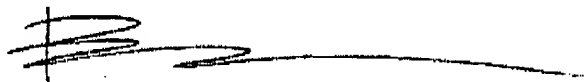
In view of the foregoing remarks, the Applicant believes all of the claims currently pending in the Application to be in a condition for allowance. The Applicant, therefore, respectfully requests that the Examiner withdraw all rejections and issue a Notice of Allowance for all pending claims.

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The Applicant requests a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



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